

a written preliminary notice of violation sent by certified mail, return receipt requested, of:

(1) The date, facts, and nature of each act or omission constituting the alleged violation;

(2) The particular provision of the regulation, rule or compliance order involved in each alleged violation;

(3) The proposed remedy for each alleged violation, including the amount of any civil penalty proposed; and,

(4) The right of the person to submit a written reply to the Director within 30 calendar days of receipt of such preliminary notice of violation.

(b) A reply to a preliminary notice of violation must contain a statement of all relevant facts pertaining to an alleged violation. The reply must:

(1) State any facts, explanations and arguments which support a denial of the alleged violation;

(2) Demonstrate any extenuating circumstances or other reason why a proposed remedy should not be imposed or should be mitigated;

(3) Discuss the relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE;

(4) Furnish full and complete answers to any questions set forth in the preliminary notice; and

(5) Include copies of all relevant documents.

(c) If a person fails to submit a written reply within 30 calendar days of receipt of a preliminary notice of violation:

(1) The person relinquishes any right to appeal any matter in the preliminary notice; and

(2) The preliminary notice, including any remedies therein, constitutes a final order.

(d) The Director, at the request of a person notified of an alleged violation, may extend for a reasonable period the time for submitting a reply or a hearing request letter.

§ 824.7 Final notice of violation.

(a) If a person submits a written reply within 30 calendar days of receipt of a preliminary notice of violation, the Director must make a final determination whether the person violated

or is continuing to violate a classified information security requirement.

(b) Based on a determination by the Director that a person has violated or is continuing to violate a classified information security requirement, the Director may issue to the person a final notice of violation that concisely states the determined violation, the amount of any civil penalty imposed, and further actions necessary by or available to the person. The final notice of violation also must state that the person has the right to submit to the Director, within 30 calendar days of the receipt of the notice, a written request for a hearing under § 824.8 or, in the alternative, to elect the procedures specified in section 234A.c.(3) of the Act, 42 U.S.C. 2282a.c.(3).

(c) The Director must send a final notice of violation by certified mail, return receipt requested, within 30 calendar days of the receipt of a reply.

(d) Subject to paragraphs (h) and (i) of this section, the effect of final notice shall be:

(1) If a final notice of violation does not contain a civil penalty, it shall be deemed a final order 15 days after the final notice is issued.

(2) If a final notice of violation contains a civil penalty, the person must submit to the Director within 30 days after the issuance of the final notice:

(i) A waiver of further proceedings;

(ii) A request for an on-the-record hearing under § 824.8; or

(iii) A notice of intent to proceed under section 234A.c.(3) of the Act, 42 U.S.C. 2282a.c.(3).

(e) If a person waives further proceedings, the final notice of violation shall be deemed a final order enforceable against the person. The person must pay the civil penalty set forth in the notice of violation within 60 days of the filing of waiver unless the Director grants additional time.

(f) If a person files a request for an on-the-record hearing, then the hearing process commences.

(g) If the person files a notice of intent to proceed under section 234A.c.(3) of the Act, 42 U.S.C. 2282a.c.(3), the Director, by order, shall assess the civil penalty set forth in the Notice of Violation.

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(h) The Director may amend the final notice of violation at any time before the time periods specified in paragraphs (d)(1) or (d)(2) expire. An amendment shall add fifteen days to the time period under paragraph (d) of this section.

(i) The Director may withdraw the final notice of violation, or any part thereof, at any time before the time periods specified in paragraphs (d)(1) or (d)(2) expire.

§ 824.8 Hearing.

(a) Any person who receives a final notice of violation under § 824.7 may request a hearing concerning the allegations contained in the notice. The person must mail or deliver any written request for a hearing to the Director within 30 calendar days of receipt of the final notice of violation.

(b) Upon receipt from a person of a written request for a hearing, the Director shall:

- (1) Appoint a Hearing Counsel; and
- (2) Select an administrative law judge appointed under section 3105 of Title 5, U.S.C., to serve as Hearing Officer.

§ 824.9 Hearing Counsel.

The Hearing Counsel:

- (a) Represents DOE;
- (b) Consults with the person or the person's counsel prior to the hearing;
- (c) Examines and cross-examines witnesses during the hearing; and
- (d) Enters into a settlement of the enforcement proceeding at any time if settlement is consistent with the objectives of the Act and DOE security requirements.

§ 824.10 Hearing Officer.

The Hearing Officer:

- (a) Is responsible for the administrative preparations for the hearing;
- (b) Convenes the hearing as soon as is reasonable;
- (c) Administers oaths and affirmations;
- (d) Issues subpoenas, at the request of either party or on the Hearing Officer's motion;
- (e) Rules on offers of proof and receives relevant evidence;

(f) Takes depositions or has depositions taken when the ends of justice would be served;

(g) Conducts the hearing in a manner which is fair and impartial;

(h) Holds conferences for the settlement or simplification of the issues by consent of the parties;

(i) Disposes of procedural requests or similar matters;

(j) Requires production of documents; and

(k) Makes an initial decision under § 824.13.

§ 824.11 Rights of the person at the hearing.

The person may:

(a) Testify or present evidence through witnesses or by documents;

(b) Cross-examine witnesses and rebut records or other physical evidence, except as provided in § 824.12(d);

(c) Be present during the entire hearing, except as provided in § 824.12(d); and

(d) Be accompanied, represented and advised by counsel of the person's choosing.

§ 824.12 Conduct of the hearing.

(a) DOE shall make a transcript of the hearing;

(b) Except as provided in paragraph (d) of this section, the Hearing Officer may receive any oral or documentary evidence, but shall exclude irrelevant, immaterial or unduly repetitious evidence;

(c) Witnesses shall testify under oath and are subject to cross-examination, except as provided in paragraph (d) of this section;

(d) The Hearing Officer must use procedures appropriate to safeguard and prevent unauthorized disclosure of classified information or any other information protected from public disclosure by law or regulation, with minimum impairment of rights and obligations under this part. The classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Hearing Officer may issue such orders as may be necessary to consider such evidence *in camera* including the preparation of a supplemental initial decision to address issues of law or fact